IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 741

CHASE BRASS AND COPPER CO., INCORPORATED,
Appellant,

v.

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the Court of Appeal of California, First Appellate District

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

Tax Executives Institute, Inc., hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for the appellant has been obtained. The consent of the attorney for the appellee was requested but refused.

Tax Executive Institute, Inc. (TEI), is a nonprofit organization whose membership consists of approximately 2,400 corporate and other business executives,

managers and administrators who are responsible for the administration of the tax affairs of their employers. TEI's membership represents approximately 1,600 business organizations a majority of whom engage in interstate commerce. A prime objective of TEI is to promote uniform enforcement of taxes throughout the nation and minimization of the costs of administration and compliance to the benefit of both government and the taxpayers.

TEI represents persons who bear the responsibility and burden of complying with the decision of the Court of Appeal of California which is at issue in this case. In view of the administrative difficulties and uncertainties created by that decision, TEI and its members have a direct and special interest in this case.

By this motion TEI seeks leave to show this Court the practical effect of the decision here involved and, specifically, to show that the decision adds a new dimension to the complexity and disparateness of the national tax structure and by so doing could impose a real and substantial burden upon the interstate activities of all multi-corporate enterprises.

TEI, therefore, urges that leave be granted to file the accompanying brief as *amicus curiae* and respectfully so moves the Court.

Respectfully submitted,

TAX EXECUTIVES INSTITUTE, INC.

WILLIAM K. CONDRELL
1250 Connecticut Avenue, N. W.
Washington, D. C. 20036
Counsel

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BRIEF OF THE TAX EXECUTIVES INSTITUTE, INC., AS AMICUS CURIAE, IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Court of Appeal of California, First Appellate District, is reported at 7 Cal. App. 3d 99, 86 Cal. Rptr. 350 (1970); and its opinion on denial of petition for rehearing is reported at 10 Cal. App. 3d 496, 87 Cal. Rptr. 239 (1970).

INTEREST OF AMICUS CURIAE

The interest of Tax Executives Institute, Inc. (TEI), in this case is set forth in the accompanying Motion for Leave to File Brief Amicus Curiae.

ARGUMENT

TEI is filing this amicus brief because of the interest of its members in achieving reasonable certainty in determining the tax liability of interstate taxpayers and in securing effective compliance with state and local tax laws.

The California Revenue and Taxation Code permits the Franchise Tax Board to require combining of income of affiliated corporations where necessary to clearly reflect the net income derived in California.

The uncertainty concerning tax liability growing out of the potential requirement by a state that a unitary or combined approach be employed was specifically noted in the Report of the Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary of the United States House of Representatives which stated:

> From the taxpayer's point of view the combined report can produce considerable uncertainty. On the one hand, the taxpayer may not be certain as to whether a combined report will be required. On the other hand, even when it is clear that such a report is required, the taxpayer may be uncertain as to how its income is to be combined and how the combined apportionment factors are to be composed.

H. Rep. No. 1480, Vol. I, p. 245, 88th Cong., 2d Sess. (1964).

The present decision creates equally serious problems in the area of compliance. Application of the unitary business concept generally requires that distinction be made between portions of the corporation's overall income which is attributable to the unitary

business and that which is not. This requires complex determinations as to what constitutes "unitary property," "unitary sales" and "unitary payroll" which must be included within the apportionment formula. The net result is that full and uniform compliance and enforcement is difficult and burdensome since so much depends upon individual judgment which inevitably varies with the hundreds of individuals involved in the administration of the national state tax system. These difficulties were pointed out by the House Special Subcommittee when it stated:

> In addition, even when all of the theoretical uncertainties are removed the combined report can create compliance problems. For example, a corporation which sells various types of products both to its own affiliates and to nonaffiliated customers will have to analyze each sale in terms of whether it is to be included in or excluded from the combined "unitary sales" factor. H. Rep. No. 1480 at 245.

The House Report goes on to describe the end result of this uncertainty and these general compliance problems in the following terms:

> In summary, the present system for the division of income is characterized by diversity and complexity.
>
> * * *
>
> The variety of techniques found in the present system requires extraordinarily complex accounting by the taxpayer who divides income. For any company to attempt to meet the literal requirements of all of these rules would clearly result in unacceptably high compliance costs. As will be seen in later chapters much of this variety is disregarded in practice and a lower order of compliance cost is incurred. The lact of consistency in

> the rules for the division of income also raises the possibility of overtaxation and undertaxation, and a later chapter will show that this problem in fact occurs today.
>
> The present system for division of income is on its face overwhelming. It will surprise no one familiar with it that in practice it works badly. H. Rep. No. 1480 at 249.

This evaluation was accurate in 1964 when the House Report was submitted. It is now even more accurate as a result of the decision of the California Court in this case. The potential effect of the decision in this case is substantial. It will significantly increase the already serious uncertainty regarding the overall state and local tax liability of multi-corporate enterprises. Such uncertainty significantly impedes reasonable tax predictions which are an essential element of good business planning. The issue here involved, therefore, is one of great national importance which should be considered by this Court.

CONCLUSION

For the foregoing reasons, TEI submits that this case presents serious questions of the utmost importance to the economic development of the United States which fully merit this Court's review.

Respectfully submitted,

WILLIAM K. CONDRELL
1250 Connecticut Avenue, N. W.
Washington, D. C. 20036
Counsel for Tax Executives Institute, Inc.